



# BOARD OF INQUIRY (*Human Rights Code*)

Library  
Public June 15/96

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Cathie Dalziel dated April 4, 1989 and as amended August 10, 1993, alleging discrimination in accommodation on the basis of sex and family status.

**B E T W E E N :**

Ontario Human Rights Commission

- and -

Cathie Dalziel

**Complainant**

- and -

Potomac Construction Limited  
Mr. R. Krueger

**Respondents**

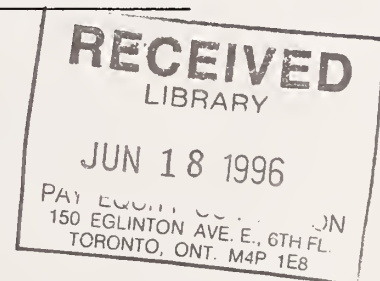
## DECISION

Adjudicator : Mary-Woo Sims

Date : June 17, 1996

Board File No: BI-0073-95

Decision No : 96-017



Board of Inquiry (*Human Rights Code*)  
150 Eglinton Avenue East  
5th Floor, Toronto ON M4P 1E8

Phone (416) 314-0004 Fax: (416) 314-8743 Toll free 1-800-668-3946



## APPEARANCES

Ontario Human Rights Commission	) ) )	Cathryn Pike
Cathie Dalziel	) ) )	Mary Truemner
Potomac Construction Limited	) ) )	Bernard Burton
R. Krueger	) ) )	Bernard Burton



## THE COMPLAINT

Cathie Dalziel alleges that she was discriminated against in accommodation because of sex and family status contrary to what are now sections 2(1), 9 and 10 of the *Ontario Human Rights Code* (the *Code*).

## THE DECISION

The hearing commenced by conference call on January 5, 1996. Counsel for the Respondent indicated that he intended to bring a motion before the Board to dismiss the complaint because of delay and prejudice arising from the deaths of the named respondent, Mr. Krueger and the superintendent referred to in the complaint.

Counsel for the Complainant suggested that in response to the motion to dismiss, she would be making a motion that the complaint be amended.

It was agreed that the motion to dismiss and any responses would be dealt with in writing and deadlines for submissions were set.

Subsequent to receiving the motion to dismiss from Counsel for the Respondents, Counsel for the Complainant requested the opportunity to cross-examine the deponents on affidavits that were attached to the Respondents' motion. The hearing was reconvened by conference call on April 12, 1996 at which time a date was set for the cross-examination of deponents.

Prior to cross-examinations and on May 2, 1996, I was advised in writing by Counsel for the Complainant that the Complainant, Ms. Dalziel wished to withdraw her complaint. On May 6, 1996, I received correspondence from Counsel for the Commission advising that the Commission consented to the withdrawal of the complaint. On May 9, 1996, I received correspondence from Counsel for the Respondents stating "... on behalf of my client Potomac Construction Limited, I do hereby consent to the withdrawal of these proceedings. ... I would respectfully request the Tribunal to consider an award of costs to the respondent".

The hearing was reconvened on May 16, 1996, by way of conference call to deal with the disposition of this complaint and to consider the Respondent's request for costs.

I derive my authority to deal with the complaint under section 39 of the *Code*. It says, in part,

The board of inquiry shall hold a hearing,

- (a) to determine whether a right of the complainant under this Act has been infringed;
- (b) to determine who infringed the right; and
- (c) to decide upon an appropriate order under section 41.

The Complainant has withdrawn her complaint. The Commission has consented to the withdrawal of the complaint. No evidence was called concerning the complaint therefore, the complaint is dismissed.

## COSTS

The parties made their submissions concerning the awarding of costs against the Commission during the conference call of May 16, 1996.

Counsel for the Respondents asked that I award costs in the amount of \$500 against the Commission because of the Commission's blind insistence on carrying on with the complaint in spite of the fact that it knew of the named Respondent's death and the death of a key witness for the Respondent.

Counsel for the Commission submitted that my authority to award costs come from section 41(4) of the *Code*. Further, that in order to award costs, I must find that the conditions set out in sections 41(4)(a) and/or (b) have been met. She submitted that the onus is on the moving party to prove that either condition has been met. She submitted that none of the arguments of Counsel for the Respondents relate to the provisions of section 41(4). Furthermore, there has been no evidence before me concerning the conduct of the Commission, merely the assertion of the Counsel for the Respondents that the Commission acted in a particular manner. She submitted that the Commission handled the complaint responsibly and that I have no evidence before me that would allow me to award costs against the Commission.

I derive my authority to award costs under section 41(4) of the *Code* wherein it states:

- (4) Where, upon dismissing a complaint, the board of inquiry finds that,
  - (a) the complaint was trivial, frivolous, vexatious or made in bad faith; or
  - (b) in the particular circumstances undue hardship was caused to the person complained against,

the board of inquiry may order the Commission to pay to the person complained against such costs as are fixed by the Board.

A number of recent cases of the Board of Inquiry, *Keltie Jones v. Highmark Properties* (B.O.I. Decision No. 96-011-C) and *David Grace and Terry Belford v. 149468 Canada Inc. (Mercedes Homes Inc.)*, *Gaetano D'Addario and Robert Kopf* (B.O.I. Decision No. 96-005C) have dealt extensively with the issue of costs and the circumstances under which they can be awarded under section 41(4) of the *Code*. Each case must be decided on its own facts in the context of the wording of the section.

In this instance, Counsel for the Respondents did not present any evidence that the complaint was trivial, frivolous, vexatious or made in bad faith nor did he present any evidence that undue hardship was caused to his client. I therefore, am of the view that this is not an appropriate case for an award of costs against the Commission and decline to do so.

Dated at Toronto this 17th day of June 1996.



Mary Woo Sims  
Board of Inquiry